

989218196

HOUSE BILL NO. 1071

Offered January 26, 1998

A *BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 10.1:3, consisting of sections numbered 2.1-116.9:7 through 2.1-116.9:15, relating to law-enforcement employees' records.*

Patron—Darner

Referred to Committee on Militia and Police

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 10.1:3, consisting of sections numbered 2.1-116.9:7 through 2.1-116.9:15, as follows:

*CHAPTER 10.1:3.**REVIEW OF LAW-ENFORCEMENT EMPLOYEES' RECORDS.**§ 2.1-116.9:7. Definitions.*

As used in this chapter, the following terms have the following meanings:

"Employer" means any state, county, city or town law-enforcement agency which has four or more employees and includes any agent of the employer.

"Law-enforcement employee" means a person currently or formerly employed by an employer.

"Personnel record" means any record kept by or created by the employer (including separate files kept by a criminal investigation agency as part of an investigation) which identifies the law-enforcement employee, and which could be used, has been used, or may affect or be used in relation to that law-enforcement employee's qualifications for employment, promotion, transfer, or additional compensation, or in relation to grounds for disciplinary action. A personnel record shall not include (i) law-enforcement employee references supplied to the employer if the identity of the person making the reference would be disclosed, (ii) materials relating to the employer's staff planning with respect to more than one law-enforcement employee, including salary increases, management bonus plans, promotions, and job assignments, (iii) information of a personal nature about a person other than the law-enforcement employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy, or (iv) information that is kept separately from other records and that relates to an ongoing investigation by the employer pursuant to § 2.1-116.9:15.

§ 2.1-116.9:8. Scope; limitations.

Personnel record information which was not disclosed or included in the personnel record but should have been, as required by this chapter, shall not be used by an employer in any judicial or quasi-judicial proceeding against the law-enforcement employee. However, materials which should have been disclosed or included in the personnel record shall be used at the request of the law-enforcement employee.

§ 2.1-116.9:9. Law-enforcement employee's right to review records.

Upon written request an employer shall provide the law-enforcement employee with an opportunity to review the law-enforcement employee's own personnel record at reasonable intervals, or as otherwise provided by law; however, two opportunities for review per twelve-month period shall always be made available. The review shall take place at a location where the employer keeps the record and during normal office hours. The employer may allow the review to take place at another time or location that would be more convenient to the law-enforcement employee. If a review during normal office hours would require a law-enforcement employee to take time off from work with that employer, then the employer shall provide some other reasonable time for the review.

§ 2.1-116.9:10. Copy of records; fees.

After the review provided in § 2.1-116.9:9, a law-enforcement employee may obtain a copy of any and all of the information contained in the law-enforcement employee's personnel record. An employer may charge a fee for providing a copy of information contained in the personnel record. The fee shall be limited to the actual cost of duplicating the information.

§ 2.1-116.9:11. Removal or correction.

If there is a disagreement with information contained in a personnel record, removal or correction of that information may be mutually agreed upon by the employer and the law-enforcement employee. If an agreement is not reached, the law-enforcement employee may place in the file a written statement explaining his or her position. The statement shall not exceed five pages on 8.5-inch by 11-inch paper and shall remain in the file as long as the contested information is a part of the file. The statement shall always be included with the information which is divulged to a third party. If either the employer or law-enforcement employee knowingly places, in the personnel record, information which is false, then

INTRODUCED

HB1071

60 *the appropriate party may pursue through legal action to have that information expunged.*

61 *§ 2.1-116.9:12. Exclusivity.*

62 *A. An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or*
63 *other disciplinary action to a third party, to a party who is not a part of the employer's organization, or*
64 *to a party who is not a part of a labor organization representing the law-enforcement employee.*

65 *B. This section shall not apply if any of the following occur:*

66 *1. The law-enforcement employee has specifically waived his or her rights under this section as part*
67 *of a written, signed employment application with another employer;*

68 *2. In a legal action or arbitration, the disclosure is ordered to a party in that legal action or*
69 *arbitration; or*

70 *3. Information is requested by a government agency as a result of a claim or complaint by a*
71 *law-enforcement employee.*

72 *§ 2.1-116.9:13. Expungement of record.*

73 *An employer shall delete disciplinary reports, letters of reprimand or other records of disciplinary*
74 *action which are more than four years old.*

75 *§ 2.1-116.9:14. Separate records.*

76 *If the employer is involved in the investigation of alleged criminal activity or violation of an agency*
77 *rule by the law-enforcement employee, the employer shall maintain a separate confidential file of*
78 *information relating to the investigation. Once the investigation is completed, any record under this*
79 *section shall be considered a "personnel record" as defined in this chapter. Upon completion of the*
80 *investigation, if disciplinary action is not taken, the law-enforcement employee shall be notified that an*
81 *investigation was conducted and shall be permitted to include a statement as provided in § 2.1-116.9:11.*
82 *If the investigation reveals that the allegations are unfounded or unsubstantiated, or if disciplinary*
83 *action is not taken, the separate file shall contain a notation of the final disposition of the investigation*
84 *and information in the file shall not be used in any future consideration for promotion, transfer,*
85 *additional compensation, or disciplinary action.*

86 *§ 2.1-116.9:15. Penalty.*

87 *If an employer violates this chapter, a law-enforcement employee may commence an action in the*
88 *circuit court to compel compliance with this chapter. The circuit court for the county in which the*
89 *complainant resides, the circuit court for the county in which the complainant is employed, or the*
90 *circuit court for the county in which the personnel record is maintained shall have jurisdiction to issue*
91 *the order.*